

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

4 th STREET INVESTORS LLC,)	
LEWIS A. SCHULL, JR., GREGORY T.)	
and SUSAN M. HEBRANK,)	
PETER R. CAMERON, STUART H. and)	
SUSAN L. KESSLER, RALPH ARTUSO,)	
ROBERT W. FIDEL, RICHARD L. WAGNER,)	
ROBERT S. and SANDRA S. HILLMAN,)	
MYLES D. SAMPSON, GREGG L. and KIM ANN)	
GOLDSTRON, LAUREL HIGHLANDS)	
RADIOLOGY ONCOLOGY PENSION,)	
ARNOLD N. and JACKLYN WAGNER,)	
MARC A. and JOANNE GOLDBERG,)	
EDWIN A. and DORIS THANER,)	
JOY T. EDWARDS, TERRY L. and SALLY A.)	
EVANS, RONALD P. MCGLADE,)	
RONALD L. CLAWSON, GAIL R. and JAMES R.)	
TITUS, DANIEL W. AMIDON,)	
WILLIAM SITTING, CHRISTOPHER C.)	
SHEEDY, FAMILY PARTNERSHIP, LP,)	
TNG L.P., LLC, trading and doing business as)	
BP INVESTMENT PARTNERS II, LP,)	
BERKOWITZ PIERCHALSKI, INC.,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action 06-536
)	
JAMES DOWDELL,)	Judge Conti
)	Magistrate Judge Hay
Defendant,)	
)	
v.)	
)	
FEDERAL INSURANCE COMPANY,)	
)	
Garnishee.)	

MEMORANDUM ORDER

On April 26, 2006, this case was referred to United States Magistrate Judge Amy

Reynolds Hay for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. §§ 636(b)(1)(A) and (B), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrate Judges.

On December 3, 2007 the magistrate judge issued a Report and Recommendation (Doc. 36) regarding the Garnishee's Motion for Summary Judgment (Doc. 25). The magistrate judge recommended that the District Court grant this Motion. Service of the Report and Recommendation was made on the parties. Objections (Doc. 37) were filed on December 17, 2007. These Objections have been carefully reviewed. The Plaintiffs do not raise any argument not raised in the Brief filed in Opposition to the Motion for Summary Judgment (Doc 28) or in the Sur-Reply Brief (Doc. 35). They continue to argue, without presentation of new authority, that the Policy at issue does not contain a reporting requirement, and, alternatively, that the garnishee must show prejudice in order to deny coverage based on a breach of the reporting requirement. In the Report and Recommendation (Doc. 36), these contentions were discussed in detail against the background of the case law and were rejected. In particular, the Plaintiffs continue to ignore the General Terms and Conditions of the policy which are applicable to the Liability Coverage Section for Directors & Officers Liability (Doc. 3-2 at 19). The General Terms and Conditions contain reporting requirements applicable to "any Liability Coverage Section." (Id. at 9). Thus, under the policy there is a reporting requirement for claims made under the Debtors & Officers Coverage Section.

The Garnishee's Response to Objections (Doc. 38) was filed on December 27, 2007 ("Garnishee's Response"). Because the Plaintiffs did "not raise[] any new legal support, information, and/or discrepancies in the record requiring [modification] or change [to] the Report and Recommendation," (Garnishee's Response at 1), the garnishee elected not to reargue the legal points made in the Motion for Summary Judgment.

After a review of the pleadings and documents in the case, together with the Report and Recommendation and the Objections thereto, the following ORDER is entered:

AND NOW, this 15th day of January, 2008 IT IS HEREBY ORDERED that the Garnishee's Motion for Summary Judgment (Doc. 25) is GRANTED.

The Report and Recommendation of Magistrate Judge Hay dated December 3, 2007 (Doc. 36) is hereby adopted as the opinion of the court except that references in the Report and Recommendation to reporting provisions in a claims made policy being strictly construed shall be read to mean that those provisions required strict compliance.

/s/ Joy Flowers Conti
Joy Flowers Conti
United States District Judge

cc:

Magistrate Judge Amy Reynolds Hay

Counsel of Record
Via Electronic Mail